



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

**October 29, 1973**

**The Honorable Fred Galindo  
Criminal District Attorney  
Cameron County  
Brownsville, Texas 78520**

**Letter Advisory No. 67**

**Re: Nepotism - computing  
degrees of kinship**

**Dear Mr. Galindo:**

**You have asked our opinion on the method of computing degrees of kinship with reference to the nepotism laws of the State, Article 432, et seq., Vernon's Texas Penal Code.**

**The statute provides, in part:**

**"No officer of this state . . . shall appoint, or vote or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting . . . ."**

**There is no statute defining what is meant by "the second degree by affinity or within the third degree by consanguinity." Nor is there any recent decision by our courts. However, opinions of this office have quoted from and relied upon Tyler Tap Railroad Company and Douglass v. Overton, 1 Texas Court of Appeals 268, § 533 (1878) where these rules were laid down:**

**"In computing the degree of lineal consanguinity existing between two persons, every generation in the direct course of the relationship between the two parties makes a degree, and the rule is the same by the civil and common law. The mode of computing degrees of collateral consanguinity at the common and by the canon law is to discover the common ancestor, to begin with him to reckon downwards, and the degree the two persons, or the more remote of them, is distant from the ancestor, is the degree of**

kindred subsisting between them. For instance, two brothers are related to each other in the first degree because from the father each one of them is one degree. An uncle and nephew are related to each other in the second degree, because the nephew is two degrees distant from the common ancestor, and the uncle is extended to the remotest degree of collateral relationship."

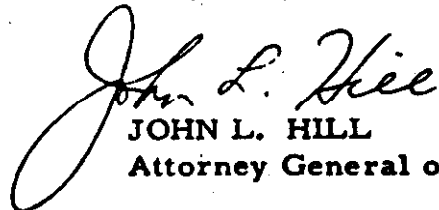
And see Attorney General Opinions O-2383 (1940), O-2648 (1940).

Your first question asks whether it is a violation of Article 432, V. T. P. C., for the District Clerk to employ a person whose mother is a first cousin of the father of the District Clerk. Your second question asks:

"(2) In computing the degrees, do we follow the steps from the District Clerk to her father, then to the common ancestor, then down to the mother and then to the person seeking employment, or do we omit the common ancestor and go directly from father to mother?"

Following the direction of the Tyler Tap case for collateral consanguinity, we identify the common ancestor as a great-grandparent of the District Clerk and the person to be employed. From this ancestor to a grandparent to the father of the District Clerk (or the mother of the employee) to the District Clerk or to the employee is three generations. Neither is more remote than the other. Thus they are related in the third degree by consanguinity and are within the statutory prohibition.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



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LARRY F. YORK, First Assistant



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DAVID M. KENDALL, Chairman  
Opinion Committee